

Instructions for Schedule D (541)

Capital Gain or Loss

References in these instructions are to the Internal Revenue Code (IRC) as of January 1, 2005, and to the California Revenue and Taxation Code (R&TC).

General Information

In general, California law conforms to the Internal Revenue Code (IRC) as of January 2005. However, there are continuing differences between California and federal law. When California conforms to federal tax law changes, we do not always adopt all of the changes made at the federal level. For more information, go to our website at ftb.ca.gov and search for **conformity**. Additional information can be found in FTB Pub. 1001, Supplemental Guidelines to California Adjustments, the instructions for California Schedule CA (540 or 540NR), and the Business Entity tax booklets.

The instructions provided with California tax forms are a summary of California tax law and are only intended to aid taxpayers in preparing their state income tax returns. We include information that is most useful to the greatest number of taxpayers in the limited space available. It is not possible to include all requirements of the California Revenue and Taxation Code (R&TC) in the tax booklets. Taxpayers should not consider the tax booklets as authoritative law.

A Purpose

Use Schedule D (541), Capital Gain or Loss, to report gains and losses from the sale or exchange of capital assets. Use Schedule D (541), Capital Gain or Loss, to report gains and losses from the sale or exchange of capital assets by an exempt organization, estate or trust. Generally, California law follows federal law.

To report sales or exchanges of property other than capital assets, including the sale or exchange of property used in a trade or business and involuntary conversions (other than casualties and thefts), get California Schedule D-1, Sales of Business Property.

If property is involuntarily converted because of casualty or theft, complete federal Form 4684, Casualties and Thefts, using California amounts.

California does not have a special capital gain tax rate.

Qualified Small Business Stock

California R&TC Section 18152.5 provides an exclusion (similar to the federal exclusion under IRC Section 1202) for 50% of the gain on the sale of qualifying small business stock originally issued after August 10, 1993, that was held for more than five years. However, for California purposes, 80% of the issuing corporation's payroll must be attributable to employment located within California, and at least 80% of the value of the corporation's assets must be used by the corporation to actively conduct one or more qualified trades or businesses in California.

R&TC Section 18038.5 also provides for the deferral of gain from the sale of small business

stock that has been held for six months or more, if qualified replacement stock is purchased within 60 days after the sale giving rise to the gain. Report gain deferred from the sale of qualified small business stock in accordance with the instructions contained in Revenue Procedure 98-48.

Estates and trusts are eligible for the exclusion; however, estates and trusts (other than common trust funds) may not pass through the exclusion to their beneficiaries. See R&TC Section 17750.

B Miscellaneous Information

See the instructions for federal Schedule D (Form 1041), Capital Gains and Losses, for the definition of capital assets.

In computing gross income, no distinction is made between gains and losses allocable to income account and those allocable to corpus account.

C Basis

California law generally follows federal law with respect to basis. In determining the basis of property acquired after December 31, 1920, by applying one of the following:

- Gift:
 1. Generally, use the donor's basis if the transaction results in a gain.
 2. Use the lower of the donor's basis or the fair market value (FMV) on the date of the gift if the transaction results in a loss.
- Bequest, devise, or inheritance:

Use the FMV at the date of death, unless an alternate valuation date election is made under IRC Section 2032.

In determining the basis of property acquired before March 1, 1913, use both of the following:

- The cost as adjusted or the FMV as of March 1, 1913, whichever is greater, in determining the gain.
- The cost as adjusted in determining the loss.

For special cases involving property acquired from a decedent before 1987, see former R&TC Sections 18031 through 18033.

The basis of the decedent's one-half of community property is the FMV at date of death. The basis of the surviving spouse's one-half of community property is the original cost or adjusted basis except:

- If death occurred after April 7, 1953, and prior to January 1, 1976, and one-half of the whole of the community property was included in the determination of the State Inheritance Tax, the basis is the FMV at date of death.
- If death occurred after December 31, 1975, and prior to June 8, 1982, and the surviving spouse does not receive any portion of

the decedent's one-half of the community property, the basis is the FMV at date of death.

- If death occurred after December 31, 1986, the basis of the surviving spouse's one-half of community property becomes the FMV on the date of the decedent's death.

D Internet Access

You can download, view, and print California tax forms and publications from our website ftb.ca.gov.

Access other state agencies' sites through the State Agencies Directory on California's website ftb.ca.gov.

Specific Line Instructions

If you file Form 109, California Exempt Organization Business Income Tax Return, attach a copy of your completed Schedule D (541) to Form 109.

Part I – Capital Gain and Loss

Line 1 – If the estate or trust qualifies for the R&TC Section 18152.5 (similar to IRC Section 1202) exclusion of gain on qualified small business stock, report 100% of the gain on line 1. Directly below the line on which you reported the gain, enter in column (a) "Section 18152.5 exclusion" and enter as a (loss) in column (g) 50% of the gain. Also report 50% of the exclusion as a positive number on Schedule P (541), line 4v.

Line 2 – If the estate or trust sold property at a gain this taxable year and is to receive any payment in a later taxable year, use the installment method and file form FTB 3805E, Installment Sale Income. If the estate or trust elects out of the installment method, report the gain or loss on line 1. Also use form FTB 3805E if a payment was received in the taxable year from a sale made in an earlier year on the installment basis.

If the estate or trust elects not to use the installment method and is reporting a note or other obligation at less than face amount on line 1, state that fact in the margin and give the percentage of valuation. Get federal Publication 537, Installment Sales, and Publication 559, Survivors, Executors, and Administrators, for additional information.

Line 4 – Report the amount from Form 1099-DIV, box 2a, on line 4. If you received a Form 1099-DIV with a gain in box 2c, part of that gain (which is also included in box 2a) may be eligible for the R&TC Section 18152.5 exclusion. California does not have a special capital gain tax rate. In column (a) of line 1, enter the name of the corporation whose stock was sold. In column (g) of line 1, enter the amount of your allowable exclusion as a loss.

Line 7 – Enter the amount of unused capital loss carryover from prior years.

There is no capital loss carryover from a decedent to an estate.

Part II – Summary of Part I

Line 9 – Use line 9 to summarize the gain or loss computed in Part I.

Column (a) — Beneficiaries

Enter the amounts of capital gain or loss allocable to the beneficiaries. Do not allocate capital losses to beneficiaries unless the capital losses are required to offset capital gains. Refer to IRC Section 643(a). Any capital loss carryover for the final year is allowed to the beneficiaries, to the extent of their distributive shares.

With the enactment of AB 1115 (Stats. 2001, Ch 920) nonresident and part-year resident beneficiaries may have to report their loss

carryovers, deferred deductions, and deferred income differently from the manner shown on their Schedule K-1 (541), Beneficiaries Share of Income, Deductions, Credits, etc. For more information, get FTB Pub. 1100, Taxation of Nonresidents and Individuals Who Change Residency.

Column (b) — Fiduciary

Enter the amounts of the gain or loss allocable to the fiduciary.

Enter any capital gain paid or permanently set aside for charitable purposes, IRC Section 642(c), in column (b).

Column (c) — The amount entered on line 9, column (c), should be the total of the amounts shown on line 9, column (a) and column (b).

Form 109 filers, see instructions for that form.

Part III – Computation of Capital Loss Limitation

Line 10 – If line 9, column (c), shows a loss, the loss is limited at line 10 to the smaller of the amount of the loss or \$3,000.

Form 109 filers, see instructions for that form.

Part IV

Complete the Capital Loss Carryover Worksheet in the instructions for federal Schedule D (Form 1041), Capital Gains and Losses, using California amounts to determine the capital loss carryover.

Instructions for Form FTB 3885F

Depreciation and Amortization

References in these instructions are to the Internal Revenue Code (IRC) as of January 1, 2005, and to the California Revenue and Taxation Code (R&TC).

A Purpose

Use form FTB 3885F, Depreciation and Amortization, to compute depreciation and amortization allowed as a deduction on Form 541, California Fiduciary Income Tax Return, or Form 109, California Exempt Organization Business Income Tax Return. Attach form FTB 3885F to Form 541 or Form 109.

Depreciation is the annual deduction allowed to recover the cost or other basis of business or income producing property with a determinable useful life of more than one year. Land is not depreciable.

Amortization is an amount deducted to recover the cost of certain capital expenses over a fixed period.

Generally, California conforms to federal law for assets placed in service on or after January 1, 1987. See California Revenue and Taxation Code Section 17250.

B Calculation Differences

California law has not always conformed to federal law regarding depreciation methods, special credits, or accelerated write-offs. Consequently, the recovery periods and the basis on which the depreciation is calculated may be different from the amounts used for federal purposes. Reportable differences may occur if all or part of your assets were placed in service:

- **Before January 1, 1987:** California disallowed depreciation under the federal Accelerated Cost Recovery System (ACRS). California depreciation is calculated in the same manner as in prior years for those assets.

- **On or after January 1, 1987:** California provides special credits and accelerated write-offs that affect the California basis for qualifying assets. California does not conform to all the changes to federal law enacted in 1993. Therefore, the California basis or recovery periods may be different for some assets.

C Additional Differences

Luxury Automobile Depreciation: California generally conforms to the federal 2003 increase (IRC Section 280F) for the limitation on luxury automobile depreciation. However, California does not conform to IRC Section 280F(k) provisions (30% and 50% additional first year depreciation). In addition, and minivans built on a truck chassis are included in the definition of trucks and vans when applying the 6,000 pound gross weight limit.

Amortization of Certain Intangibles: California conforms to IRC Section 197 relating to the amortization of intangibles as of January 1, 1994. There is no separate California election required or allowed. However, for Section 197 property acquired before January 1, 1994, the California adjusted basis as of January 1, 1994, must be amortized over the remaining federal amortization period.

Certain Tangible Property: The election expense under IRC Section 179 does not apply to estates and trusts.

Qualified Indian Reservation Property:

California has not conformed to the accelerated recovery periods available under the Alternative Depreciation System (ADS) for such property.

Grapevines Subject to Phylloxera or Pierce's Disease:

For California purposes, replacement grapevines may be depreciated using a recovery period of five years instead of ten years.

For more information about adjustments, get FTB Pub. 1001, Supplemental Guidelines to California Adjustments.

This list is not intended to be all-inclusive of the federal and state differences. For additional information, refer to California's Revenue and Taxation Code.

Specific Line Instructions

Line 1 – Complete columns (a) through (i) for each asset or group of assets placed in service after December 31, 2007. Enter the column (f) totals on line 1(f). Enter the column (i) totals on line 1(i).

Line 2 – Enter total California depreciation for assets placed in service before January 1, 2007, taking into account differences in asset basis or differences in California and federal tax law.

Line 4 – Enter total California amortization for intangibles placed in service before January 1, 2008, taking into account any differences in asset basis or differences in California and federal tax law.

Line 6 – Add line 3 and line 5. Enter the total on line 6. See the instructions to Form 541, line 3, for information on depreciation and amortization reported on federal Schedule C. Form 109 filers: Enter the total on Form 109, Part II, Line 21a.

Attach a schedule if you need additional space.